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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/868,944      | 09/24/2001  | Jan Van Buuren       | F7480(V)            | 6288             |

7590 06/09/2004  
Linda Horvath  
UNUS Patent Department  
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Edgewater, NJ 07020

EXAMINER

PADEN, CAROLYN A

| ART UNIT | PAPER NUMBER |
|----------|--------------|
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1761

DATE MAILED: 06/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/868,944

Applicant(s)

VAN BUUREN, JAN

Examiner

Carolyn A Paden

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 05 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 12-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 12-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

The request filed on February 5, 2004 for a Continued Prosecution Application (CPA) under 37 CFR 1.53(d) based on parent Application No. 09/868,944 is acceptable and a CPA has been established. An action on the CPA follows.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 12-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lai Ganguli (EP 0849353).

Lai Ganguli (EP 0849353) discloses debittering olive oil. Here olive oil is described to contain from 300 to 2000 ppm polyphenols (page 3, line 52). Suspended polyphenols are also described in the oil (page 3, line 58) and the decanted oil is described to contain 3 wt% fines and 2.2wt% water (example 3). The water in the olive oil is dispersed and slowly settles out within 1-5 days and contains 300-20000 ppm water-soluble polyphenols (example 2). The polyphenols are also described as having a bitter index of less than 3 (table III and IV). Claim 12 appears to differ from the

reference in the express teaching of the size of the particles that are in the water-soluble phase. Even though the particle size of the dispersed polyphenols is not specifically mentioned in the reference, it would have been obvious to expect that their size was small because it appears as haze (page 3, line 58) and fines. The range of particles size in the reference and in the claims both falls within a range that is visible to the ordinary eye. One of ordinary skill in the art would expect that the particle size of the reference to fall within the range that is set forth in the claims. Claims 13 and 14 appear to differ from the reference in the suggestion of the use of a graph to determine the bitterness of the olive fruit. But no unobvious or unexpected results are seen from the use of the graph in the claims, particularly when the numeric values are the same.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.


Claims 12-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Lai Ganguli (EP 0849353).

Lai Ganguli (EP 0849353) discloses debittering olive oil. Here olive oil is described to contain from 300 to 2000 ppm polyphenols (page 3, line 52). Suspended polyphenols are also described in the oil (page 3, line 58) and the decanted oil is described to contain 3 wt% fines and 2.2wt% water (example 3). The water in the olive oil is dispersed and slowly settles out within 1-5 days and contains 300-20000 ppm water-soluble polyphenols (example 2). The polyphenols are also described as having a bitter index of less than 3 (table III and IV). Even though the particle size of the dispersed polyphenols is not specifically mentioned in the reference, it would have been obvious to expect that their size was small because it appears as haze (page 3, line 58) and fines. The range of particles size in the reference and in the claims both falls within a range that is visible to the ordinary eye. The particle size of the reference would be expected to fall within the range that is set forth in the claims. Claims 13 and 14 require use of a graph to determine the bitterness of the olive fruit. But no difference is seen from the use of the graph in the claims, particularly when the numeric values are the same.

Claims 15-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Aeschbach et al in view of Gitfinger.

Aeschbach discloses the incorporation of antioxidants principles into fat by the use of antioxidants from vegetable material (see abstract). At column 2, lines 10-19, the antioxidants are said to derive from the use of any vegetable material that contains phenolic antioxidants. The concept of providing freshly ground material is disclosed at column 2 lines 20-21. The composition or protected fat is described at column 4, lines 1-6 to protect the fatty phase of a food, such as meat, stock, sauce soup or cream. Olive oil is described as an oil source in claim 4. Claim 15 appear to differ from the reference in the express suggestion that olives contain polyphenolics. Gutfinger teaches that olives contain polyphenolics and that the polyphenolics are antioxidants. Further the polyphenolics are extracted from the pulp. Thus one would expect that a solid portion of an olive would contain the desired polyphenols. It would have been obvious at the time of applicant's invention to utilize the olives as a source of polyphenols in the process of Aeschbach in order to provide a fat with an antioxidant in it that is used in foods.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn A Paden whose telephone

  
CAROLYN PADEN G-3-04  
PRIMARY EXAMINER  
GROUP 1800 1761

number is (571) 272-1403. The examiner can normally be reached on Monday to Friday from 7 am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano, can be reached on (571) 272-1398 or by dialing 571-272-1700. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).